

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1590/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Renuka Kumar,
6, Habibullah Avenue, 3rd Street,
Chennai - 600 006.

v. The Assistant Commissioner of
Income Tax,
Corporate Circle 4(4),
Chennai - 600 034.

PAN : ALUPK 1386 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Yamuna, JCIT

सुनवाई की तारीख/Date of Hearing : 09.05.2017

घोषणा की तारीख/Date of Pronouncement : 22.06.2017

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-8, Chennai, dated 29.03.2016 and pertains to assessment year 2009-10.

2. The only issue arises for consideration is with regard to addition of ₹3 Crores under Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act').

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is a Director in Martech Peripherals Pvt. Ltd., holding 99% of the shares. For the period 01.04.2008 to 31.03.2009, an outstanding balance of ₹3 Crores was due to Martech Peripherals Pvt. Ltd. from the assessee. According to the Ld. counsel, a debit should have been made from current account of Shri Sharad Kumar. However, inadvertently it was debited to the account of the assessee. Therefore, according to the Ld. counsel, the money inadvertently debited to the account of the assessee cannot be a reason for holding that there was deemed dividend.

4. Referring to the assessment order, more particularly page 3, the Ld.counsel submitted that the instruction of Shri Sharad Kumar, the Managing Director, was extracted by the Assessing Officer in the assessment order. This cannot be ignored by the Assessing Officer while computing the taxable income. At the best, according to the Ld. counsel, the payment might have been made for the benefit of Shri Sharad Kumar and he also repaid the amount to the

company, therefore, no part of amount has to be construed as deemed dividend in the hands of the present assessee. The Ld.counsel further submitted that the above said sum of ₹3 Crores is repayment of loan by M/s Martech Peripherals Pvt. Ltd. to Shri Sharad Kumar through the present assessee's account. There was a journal entry in the ledger of M/s Martech Peripherals Pvt. Ltd. in the account of Smt. Renuka Kumar on 07.03.2009. This factual aspect has been ignored by the Assessing Officer simply observing that it is not acceptable. When the books of account clearly demonstrate that there was ledger transfer, according to the Ld. counsel, the Assessing Officer cannot ignore the same so lightly.

5. On the contrary, Smt. Yamuna, the Ld. Departmental Representative, submitted that M/s Martech Peripherals Pvt. Ltd. presented a cheque on 06.03.2009 in favour of the present assessee and the cheque was realized in the account of the assessee in Kotak Mahindra Bank on 07.03.2009. Referring to the contention of the assessee that the payment was supposed to be made by debiting current account of Shri Sharad Kumar, the Ld. D.R. submitted that the amount was in fact debited to the account of the present assessee. The Ld. D.R. submitted that every entry in

the books of account were made carefully, therefore, the assessee now cannot claim that instead of debiting to Shri Sharad Kumar's account, it was debited in the account of the assessee.

6. On a query from the Bench that when the instructions were issued said to be issued by Shri Sharad Kumar to debit his account and issue cheque in favour of the assessee, how it can be deemed dividend in the hands of the assessee, the Ld. D.R. submitted that the amount has been invested by the assessee, therefore, it cannot be said that the payment was made to the Managing Director Shri Sharad Kumar, hence the Assessing Officer has rightly rejected the explanation of the assessee. According to the Ld. D.R., the Assessing Officer has rightly brought the payment of ₹3 Crores for taxation as deemed dividend under Section 2(22)(e) of the Act.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee's account was debited with a sum of ₹3 Crores. The assessee and Shri Sharad Kumar are shareholders. In fact, the assessee was holding 99% shares. Shri Sharad Kumar is the Managing Director. From the instruction, which was reproduced at page 3 of the assessment order, it is obvious that Shri Sharad Kumar instructed

one Shri Senthil Kumar to debit his account and issue cheque in favour of the present assessee for a sum of ₹3 Crores. Therefore, it is obvious that instruction was issued by Shri Sharad Kumar for whose benefit the amount was paid to Smt. Renuka Kumar, the present assessee. The question arises for consideration is when Shri Sharad Kumar, the Managing Director, instructed to debit his account and pay the amount to Smt. Renuka Kumar, can there be addition in the hands of the present assessee? This Tribunal is of the considered opinion that when the amount was paid as per instruction of Shri Sharad Kumar, the Managing Director, at the best, we can say the payment was made for the benefit of Shri Sharad Kumar and not for the present assessee. Therefore, there cannot be any addition in the hands of the assessee.

8. Merely because the assessee made investment by using the funds received from company, it cannot be construed that the assessee has taken advantage from the company. Shri Sharad Kumar happens to be the Managing Director, his account ought to have been debited. Unfortunately, instead of debiting Shri Sharad Kumar's account, the account of the present assessee was debited. That created confusion in the minds of the Assessing Officer. This

Tribunal is of the considered opinion that the claim of the assessee that instead of debiting Shri Sharad Kumar's account, the account of the assessee was debited appears to be bonafide, therefore, the outstanding amount of ₹3 Crores cannot be construed as deemed dividend in the hands of the assessee. Hence, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, the orders of both the authorities below are set aside and the addition of ₹3 Crores is deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 22nd June, 2017 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 22nd June, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.